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09/546,549	04/10/2000	Paul B. Jennings JR.	0769-4703	2802

7590

10/03/2003

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EXAMINER

BROWN, MICHAEL A

ART UNIT PAPER NUMBER

3764

DATE MAILED: 10/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# BEST AVAILABLE COPY

## Office Action Summary

Application No.

09/346,549

Applicant(s)

Paul Jennings et al

Examiner

Michael Brown

Group Art Unit

3264

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- ☒ Claim(s) 1-103 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☒ Claim(s) 50-71 and 95-103 is/are allowed.
- ☒ Claim(s) 1-3, 5-6, 9-27, 29-49, 72-75, 80 and 82-94 is/are rejected.
- ☒ Claim(s) 4, 7, 28, 76-79 and 81 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2-3
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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## DETAIL ACTION

### *Claim Rejections - 35 U.S.C. § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:  
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
2. Claims 1-3, 5-6, 8-27, 29-49, 72-75, 80, 82-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bark (fig. 3) in view of Bark (fig. 10).

Bark discloses in figures 3-4 a surgical system comprising a liquid water impermeable membrane (fig. 1), a seal (the sheets (1 and 3) are sealed together to form the pouch), an adhesive (6, 7) an implement 5, a removable cover over the adhesive (col. 4, lines 60) disposed in the vicinity of the lower end of the membrane (fig. 3), port 13, a seal 6 for the port, the port is proximal the lower end (fig. 2), the port includes an opening (the opening to 13), the port and the implement are configured to cooperate with each other (the port directs fluids to the implement), an opening in the envelope 4, the opening opens the seal, the membrane is made of plastic (polyethylene) and it is flexible (col. 4, lines 1-2), the implement is selected from supplies, it is disposable, reusable and it includes durable part (woven synthetic fibers). However, Bark does not disclose in figures 1-3 a fold in the membrane. Bark teaches in figure 10 a surgical system having a membrane having a fold at the bottom of the membrane. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the fold as taught by Bark in figure 10 could be incorporated into the membrane disclosed in figures 1-3 because having the fold versus attaching to sheets together at their outer ends is two different ways to

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attach to sheets together to form a membrane. It is inherent that the device could be sterilized if use on the same patient more than once. Bark discloses using a ziplock to close the opening. The ziplock is a tear seal. The synthetic woven fibers of the implement could be plastic.

*Allowable Subject Matter*

3. Claims 4, 7, 28, 76-79 and 81 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Claims 50-71 and 95-103 are allowed.

*Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Almo discloses a storage pack. Roessler discloses a disposable bib. Stoddard discloses a receptacle. Ocley discloses a collection bag. Although each of these references is pertinent prior art, neither was used to reject any claims, in the first office action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is (703) 308-2682.

M. Brown  
September 29, 2003



Michael A. Brown  
Primary Examiner